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# THE THIRTEENTH AMENDMENT
AND THE
# GENERAL RAILWAY STRIKE

BY
BLEWETT LEE
*Chicago, Ill.*

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# The Thirteenth Amendment and the General Railway Strike.

IMMEDIATELY before the passage of the Adamson Law, September 3, 1916, a general strike was called of the railway trainmen of the United States, and the country was face to face with a situation which the President said should never be allowed to occur again. The passage of this statute is the only thing which prevented the country from being plunged immediately into a situation of the greatest distress and privation. Practically all of the railroad transportation would have come to an end for the time being, and the results to the masses of the people would have been more frightful than those of war itself. In two messages to Congress the President has proposed the enactment of a statute making it an offense to declare or cause a lockout or strike, or to incite, encourage or aid in so doing, until a Board of Mediation and Conciliation shall have passed upon the dispute and made public its recommendations. It has been stoutly contended, however, on behalf of the leaders of organized labor, that a statute of this character would be contrary to the Thirteenth Amendment to the Constitution of the United States, forbidding involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted. Is there in fact any constitutional impediment to constructive legislation of such a character as the President has proposed, and which exists in the Dominion of Canada, in the Australasian Commonwealths and in almost every important civilized State, with the exception of the great democracies of England, France and the United States? In Holland, after the general railway strike in 1903, legislation was passed to prevent the possibility of so great a misfortune in the future. In France in 1910, the general railway strike was ended in six days by the State mobilizing the strikers and requiring them to run the trains as a part of their military service. In England, since all of the railways are operated by the State, the possibility of a general rail-

way strike has been done away with, at least until the return of peace. In the United States, however, Congress has as yet enacted no statute to protect the public against this great catastrophé.[1]

Legal machinery for the peaceable adjustment of labor disputes in industries generally is provided, and strikes and lockouts are forbidden, under penalties, in the Commonwealth of Australia, New South Wales, South Australia, Tasmania, Western Australia, New Zealand and Denmark; and in the more limited class of public utilities, such as railroads, similar machinery exists in Queensland, Austria, Belgium, Canada, Holland, Italy, Turkey, Portugal, Roumania, Russia, Spain, the Transvaal and Switzerland.[2] In Spain and Portugal, there may be a strike after public notice has been given for a certain number of days, and a public statement made as to the causes of the strike. In France, the government has a right to mobilize the strikers under military law and compel them to return to duty, and the same power exists in Italy. In Germany, strikes and lockouts are practically prohibited on public utilities; the by-laws of the railway unions specifically waive all claim to the right to strike, and a workman who struck would lose a position for life in the service of the government. In England, the adjustment of labor disputes is by voluntary arbitration, for which there exists full and effective machinery; but there is no legislation prohibiting strikes or lockouts.

A review, therefore, of the situation as it exists amongst most of the civilized countries of the world, shows that in nearly all

[1] See generally, RAILWAY STRIKES AND LOCKOUTS, a study of arbitration and conciliation laws of the principal countries of the world providing machinery for the peaceable adjustment of disputes between railroads and their employees, and the laws of certain countries for the prevention of strikes, published by the United States Board of Mediation and Conciliation, November 1, 1916, Washington, Government Printing Office. For a treatment of the subject from its historical and economic side, attention is called to a valuable article on "Government Prevention of Railroad Strikes," by Samuel O. Dunn, Editor of the *Railway Age Gazette*, appearing in the March, 1917, number of *Scribner's Magazine* (Vol. 61, p. 307).

[2] See MONTHLY REVIEW, U. S. BUREAU OF LABOR STATISTICS, January, 1917, p. 11.



of the, and especially in English speaking countries, outside of England and the United States, the laws forbid strikes or lockouts upon railroads. General railway strikes have been called in Hungary, France, Holland and the United States, the general strike in the United States being, however, averted by a partial surrender of the government to the demands of the strikers and the passage of a law requiring the employers to increase the wages of certain employees, including some of those already most highly paid, provision being made for inquiry afterwards as to the merits of the settlement.

It is plain that the Thirteenth Amendment, when it says:

> "Neither slavery nor involuntary servitude, except as a punishment of crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

has reference to the compelled labor of individuals. There is nothing in the Amendment which guarantees any right of employees to conspire together to quit the service of an employer all at the same time. The Amendment certainly contains no guarantee of a right to destroy the business of an employer by concerted action. At the most, it can mean nothing more than the right of an individual, acting alone, to quit work. The right to strike is the right to quit work in concert by agreement, and this certainly the Thirteenth Amendment does not cover. The right of a man to cease labor which is distasteful to him, by individually quitting his employment, is one thing, and an agreement that everybody shall lay down their tools at once, is another. The Thirteenth Amendment does not doom us to perpetual industrial anarchy. In any employment, public or private, it would be possible to substitute the orderly process of hearing and judgment of a tribunal for the lawlessness of civil war between capital and labor.

In case, however, of an employment in which the public has an interest, like that of a railway trainman, the analogy of the soldier or sailor in public employment, or of the seaman in private employment, is very persuasive. It is submitted that the service of an interstate carrier may by statute be treated as an enlistment in which men may be required to serve out their

terms, or at least stay at their posts until their places can be filled. In the case of the seaman on a ship engaged in private service, it is a sufficient justification that the service is of such public importance that he will not be allowed to desert it. Ships must sail, and new sailors are not always available. Engineers must not leave their trains between terminals. In the case, however, of a seaman engaged in the service of a public utility, as of the railway trainman, we have an additional element that in a very real sense the employment is in the public service and the welfare of the State requires that he must stay at his post until relieved from duty.

In the case of Robertson *v.* Baldwin,[3] the question was presented of the validity of certain sections of the Revised Statutes of the United States, which permitted the arrest and forcible return to a vessel of seamen who deserted the ship before the expiration of the contract which they had signed shipping articles to perform. The defense was set up that the statutes were in conflict with the Thirteenth Amendment, forbidding slavery and involuntary servitude. Upon this point the court said:[4]

> "Does the epithet 'involuntary' attach to the word 'servitude' continuously, and make illegal any service which becomes involuntary at any time during its existence; or does it attach only at the inception of the servitude, and characterize it as unlawful because unlawfully entered into? If the former be the true construction, then no one, not even a soldier, sailor or apprentice, can surrender his liberty, even for a day; and the soldier may desert his regiment upon the eve of battle, or the sailor abandon his ship at any intermediate port or landing, or even in a storm at sea, provided only he can find means of escaping to another vessel. If the latter, then an individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another during the continuance of the contract;—not that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed involuntary. Thus, if one should agree, for a yearly wage, to serve another in a particular capacity during his life, and never to leave his estate without his consent, the contract might not be enforceable for the want of a legal remedy, or might be void upon grounds of public policy, but the servitude could not be termed involuntary."

[3] 165 U. S. 275 (1897). [4] P. 280.



The court was also of the opinion that if a contract with seamen could be considered within the letter, it would not be within the spirit of the Amendment a case of involuntary servitude, pointing out that from ancient times the necessity had been recognized for compelling seamen to fulfill their obligations to carry out the voyage.

Mr. Justice Harlan dissented, and maintained the doctrine that:

> "A condition of enforced service, even for a limited period, in the private business of another, is a condition of involuntary servitude." [5]

He made the following distinction in regard to military service:

> "The Army and Navy of the United States are engaged in the performance of public, not private, duties. Service in the army or navy of one's country according to the terms of enlistment never implies slavery or involuntary servitude, even where the soldier or sailor is required against his will to respect the terms upon which he voluntarily engaged to serve the public. Involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not, in any legal sense, either slavery or involuntary servitude.[6]
>
> "The condition of one who contracts to render personal services in connection with the private business of another becomes a condition of involuntary servitude *from the moment he is compelled against his will* to continue in such service.[7]
>
> "If Congress, under its power to regulate commerce with foreign nations and among the several States, can authorize the arrest of a seaman who engaged to serve upon a private vessel, and compel him by force to return to the vessel and remain during the term for which he engaged, a similar rule may be prescribed as to employees upon railroads and steamboats engaged in commerce among the States." [8]

[5] P. 292. [6] P. 298.
[7] P. 301. [8] P. 302.

It may be observed in the illustration which Mr. Justice Harlan puts, that public carriers engaged in commerce among the States and railway trainmen in their employ are not carrying on a private business, and that the very public nature of their business makes the case like the case of a soldier or sailor, enlisted in the army or navy of the United States, to such an extent that Congress can by law compel the employee to fulfill his engagements when necessary in the interest of the public safety and welfare. Congress can fix the rates of railroads. It can also keep railroads going.

That this presents a real distinction, was recognized by Mr. Justice Harlan himself in delivering the earlier opinion, in the Circuit Court of Appeals for the Seventh Circuit, in the case of Arthur *v.* Oakes,[9] where an injunction was sought against the employees of the receivers of the Northern Pacific Railroad Company, "from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad." In this case the court held that it was contrary to the practice of a court of equity to compel the performance of personal service, since the court could not undertake to supervise a continuous act, involving labor and care. On this point, the court also said:[10]

> "It is supposed that these principles are inapplicable or should not be applied in the case of employees of a railroad company, which, under legislative sanction, constructs and maintains a public highway primarily for the convenience of the people, and in the regular operation of which the public are vitally interested. Undoubtedly the simultaneous cessation of work by any considerable number of the employees of a railroad corporation, without previous notice, will have an injurious effect, and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employees and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation, restraining alike employees and employers so far as necessary adequately to guard the rights of the public as involved in the existence, maintenance and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employee from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service, or actually to perform the personal acts required in such employments, or compel such managers, against their will, to keep a particular employee in their service."

[9] 63 Fed. 310 (1894).

[10] Pp. 318, 319.



It will be observed that the court very clearly intimates that by legislation the power of an employee to quit the service of a railroad company could be controlled.

In the case of a private employment, such as the service of a laborer upon a plantation, the employee cannot be compelled to labor as he promised he would do. This is a necessary inference from the rulings which have been made by the Supreme Court of the United States in peonage cases, the state peonage being one in which a laborer is compelled to work out a debt. A case which is very strong upon this subject is Bailey *v.* State of Alabama,[11] the court holding that a State cannot by statute create a presumption that the person who contracts to labor and thereby receives advances from his employer, and abandons the service without refunding the money, prima facie intends to defraud his employer, and that if the jury finds that such is the case, can be punished by imprisonment in the county jail. For a convict to be compelled to work out a fine by personal service for a surety who has paid his fine, is peonage and involuntary servitude, forbidden by the Thirteenth Amendment.[12]

In an interesting opinion by Attorney General Moody, afterward Justice of the Supreme Court of the United States, rendered for the guidance of the Panama Canal Commission, he says:[13]

> "I have no hesitation in saying that any person held to labor or service against his will, although he may have voluntarily

[11] 219 U. S. 219 (1911).

[12] United States *v.* Reynolds and United States *v.* Broughton, 235 U. S. 133, 150 (1914).

[13] 25 Op. Atty. Gen. 474, 477.

contracted to submit himself to such control, is in a condition of involuntary servitude within the meaning of the Constitution."

He pointed out, however, that there were exceptions in the case of deserting seamen, children, wards, soldiers and sailors. He also said: [14]

"A laborer may agree to serve for a specified time, and is liable for damages for the breach of his contract, and may, in certain extreme cases, be made by law punishable for the willful abandonment of his labor. But when he is held by compulsion of law or force to complete the labor which he has engaged to perform, he is thereby held in a condition of involuntary servitude."

All of the illustrations used by the Attorney General show, however, that he has in mind private, not public, service on the part of the employees. There is no constitutional right of the employees to close the Panama Canal by a concerted quitting of work.

Professor Freund points out [15] that a number of States have made it a misdemeanor for railroad engineers or conductors, in furtherance of a strike, to abandon their locomotives or trains elsewhere than at the place of destination, and the author reaches the final conclusion that in a business affected with a public interest, the violation of a contract of service which is essential to the carrying on of the business, may, as a matter of constitutional power, be punished.

In the case of Butler *v.* Perry,[16] it was held that the statute of Florida requiring every able-bodied man to work on the public roads for six days in a year, was constitutional. The court pointed out that from the earliest times in English law, a man could be compelled to march against the enemy and to repair roads and bridges, and that nowhere had laws requiring labor upon public roads been regarded as involuntary servitude. It will also be observed that a man who works on the roads gets no pay whatever for the service. His employment is public and

[14] P. 482.
[15] FREUND, POLICE POWER (1904), § 452.
[16] 240 U. S. 328 (1916).



he performs his duties as a citizen. If the public necessity required it, could not the citizen be compelled, not only to build a road, but to operate it as well, whether he had promised to do so or not? Has the arm of the nation grown so weak that it cannot draft men to operate the railroads of the country in case of necessity, even in time of peace?

In considering the duty of a seaman not to desert his ship, it should be borne in mind that the owners of general ships, carrying goods or merchandise for hire in the usual course of business, are common carriers, so that, except where a ship is engaged in private employment, the case of the seaman is exactly similar to that of the railroad employee engaged in transportation. This analogy fails in the case of a ship chartered for special cargo, and which does not hold itself out as carrying goods for the public, although indirectly it is still a matter of great public importance. In Robertson *v.* Baldwin [17] it does not appear that the ship was even a common carrier.

We are apt to forget that even in times of peace the State has the right to compel our service for the public good. I have already mentioned the case of working the roads. Another example is where a sheriff summons us to serve upon a *posse comitatus* to assist in preserving the peace. It is a misdemeanor to disobey the summons of a sheriff. A peace officer has the right to summon bystanders to assist him in making an arrest, and the bystander is bound to respond. Although there is seldom occasion to enforce the law upon the subject, a man may be compelled to accept office and serve the State even without compensation. I venture to think that the powers of the United States will be found adequate to man every train in this country, if the public necessity should require it, and Congress should see fit to bring its full powers into action, and this not only in time of war, but in time of peace.

We are accustomed to the idea of military conscription, but civil conscription, the compulsion of the citizens to satisfy any civil need of the State, is just as well established by the common law. Every citizen is bound to render to the State neces-

[17] *Supra*, note 3.

sary service, whether in peace or in war. The sovereign may require of the subject anything that does not necessitate the subject's exile from the realm. We have become so accustomed to compulsion to sit upon juries, and compulsion to appear as witnesses, that we hardly think of them as being in the nature of conscription. In times of coal famine, the State could compel the service of its citizens to operate the mines—nor is the State bound to pay compensation for the service.[18]

In the case of Re Debs,[19] it was a time of peace, if it may be called peace when the skies of Chicago were reddened with the flames of burning freight cars and militia were retreating before the mob. The United States, on its own behalf, entered the courts and kept the railroads going by enjoining unlawful interference with interstate commerce and the transportation of the mails. The nation, itself, was not ashamed to use the right of injunction for this purpose, and a great President sent the troops of the United States to the City of Chicago to maintain the law, and enforce the orderly processes of the courts.

It is interesting to observe that in the Clayton Act of October 15, 1914,[20] supplementing the existing laws against unlawful restraints and monopolies, and for other purposes, while the teeth of the Federal courts for punishing contempt of decrees made in labor cases were being drawn, exception was made by Section 24 in case of decrees in suits brought by or prosecuted in the name of or on behalf of the United States.

By the Act of August 29, 1916,[21] it is provided that:

> "The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable."

[18] 30 HARV. LAW REV. 265, "Civil Conscription in the United States."
[19] 158 U. S. 564 (1895).
[20] 38 Stat. L. 739; U. S. Comp. '16, § 1245d.
[21] C. 418, Supp. to U. S. Comp. Stat., § 1789a.



Indeed, Congress had gone much further than this. By the Act of January 31, 1862,[22] it was enacted,

> "That the President of the United States, when in his judgment the public safety may require it, be, and he is hereby authorized to take possession of any or all the telegraph lines in the United States, their offices and appurtenances; to take possession of any or all the railroad lines in the United States, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances; to prescribe rules and regulations for the holding, using and maintaining of the aforesaid telegraph and railroad lines, and to extend, repair, and complete the same, in the manner most conducive to the safety and interest of the Government; to place under military control all the officers, agents, and employees belonging to the telegraph and railroad lines thus taken possession of by the President, so that they shall be considered as a post road and a part of the military establishment of the United States, subject to all the restrictions imposed by the rules and articles of war."

It is interesting to observe that this statute purports to be enacted under the power to establish post roads, as well as under the war power. It might also have been enacted under the power to regulate commerce among the several States.

The Canadian Industrial Investigation Disputes Act of 1907 [23] was assented to on March 22, 1907. It applied originally only to mines and public utilities. The punishment of employers for lockouts, pending investigation, is not less than one hundred dollars or more than one thousand dollars for each day of the lockout; [24] and against employees for striking, pending investigation, is not less than ten dollars or more than fifty dollars for each day of the strike.[25] By agreement in advance, the award of the Board may be made a rule of court and enforcible as such.[26] Since its enactment in 1907, according to the last figures I have seen, there have been one hundred and seventy-seven applications for the establishment of a Board, one hundred and

[22] 12 Stat. L. 334.
[23] Stats. Canada, 6 & 7 Edw. (1907), c. 20, p. 235.
[24] § 58. [25] § 59.
[26] § 62.

fifty-eight of which were granted by the government, and in all but nineteen of the cases where findings were made they were carried out voluntarily. From March 22, 1907, until October 18, 1916, the Act averted eighty-five out of ninety-two threatened strikes on railroads. It is to be noted that in the Canadian Act the investigation is made under oath, and it is sufficient that either party shall apply for it.

In the New Zealand Industrial and Arbitration Act of 1904, the awards are enforced against both sides by financial penalties, which may amount to as much as two thousand, five hundred dollars. Associations of employees and workmen are incorporated. There are similar laws in effect in Australia.[27]

A similar statute was passed in Colorado, April 10, 1915.[28] The Colorado Act applies to industrial disputes of all sorts. The practical experience of civil war, as a result of industrial disputes, has undoubtedly had a very persuasive effect in inducing the passage of this Act in Colorado. Incidentally, it may be remarked that the great advantage of having the award made an order of court is this: there is an impartial tribunal always ready to construe the award when needed.

From the *Monthly Review of the United States Bureau of Labor Statistics*[29] it appears that, while the Trades & Labor Congress of Canada recently requested a repeal of the Canadian Industrial Disputes Investigation Act, the Canadian Federation of Labor has approved the provisions of the Act and recommended that the enforcement of awards under it be made compulsory, and that it be extended to government employees not coming under the Civil Service Act, and to all industries. The scope of the Act was also extended by Order in Council to cover disputes in industries producing war munitions of all sorts. The Canadian Minister of Labor is now considering various improvements, borrowed in a large measure from experience in Australasia, shortening the time of setting the Act in operation, doing away with the expense of having a strike vote in advance, and providing for a secret vote by ballot before strikes are called. In

[27] INDEPENDENT, September 4, 1916.
[28] Colo. Laws, 1915, c. 180, p. 562.
[29] Vol. 3, no. 6, December, 1916.



order to avoid controversy, it is possible that the proposed improvements will not be introduced into Parliament until the termination of the present war. Two of the important new provisions are, one that a municipality interested or the Minister of Labor may of his own motion bring about the constitution of a Board in case of long continued or serious disputes in any industry, and another for the reconvention of the Board when any question arises as to the meaning or application of its recommendation.[30]

On September 26th, 1916, in an address before the Grain Dealers National Association at Baltimore, Honorable Judson C. Clements, Interstate Commerce Commissioner, made the following statements:

> "I am led, after much thought, to suggest that an effective and just remedy will be found in the recognition of the principle that those who engage as employees in the public service of the transportation companies are just as much in interstate commerce as are the companies themselves, and that such employees are affected in respect thereof, in the same way and to the same extent as are the companies themselves, with a public interest which they can no more ignore than can the transportation companies. The law makes it mandatory upon the carrying companies to move traffic which is offered, and they are subject to the process of mandamus to compel them to do so. They may accomplish this through an organized corps of employees; and can it be possible that the inanimate corporation is subject to the law and to the public interest, while the necessary employees through which it must perform its duties are free from public responsibility in connection with the service in which it is engaged?
>
> "If these premises are sound, what is the practical remedy to be applied? I would suggest that it is to write into the law a legally established obligation and duty upon every employee who seeks and accepts service with the transportation companies not to leave the service, or combine with others to do so, on account of any controversy thereafter arising concerning any change in the conditions

[30] For the draft of a law, proposed to amend the Industrial Disputes Investigation Act of 1907, see RAILWAY STRIKES AND LOCKOUTS (1916), *supra*, p. 109.

of service or rates of compensation, except upon due and reasonable notice to be prescribed by statute permitting a sufficient length of time for a fair and impartial investigation and determination of the matter in controversy, either by arbitration or by some duly constituted public tribunal."

The bill which was introduced in the House of Representatives, February 5, 1917, by Mr. Adamson,[31] in the Senate, February 8, 1917, by Mr. Newlands,[32] to amend an Act providing mediation, conciliation, and so forth, approved July 15, 1913; to authorize the President to protect the operation of trains in time of peace, and to take possession of the common carriers and draft their crews and officials in time of war, and for other purposes; had some very serious defects. During the three months in which the proposed Board are allowed to make their findings, all of which would probably be required, there is nothing to prevent a full stop of railroad transportation of the country, with the resulting overwhelming misery, damage, injury and loss to the whole people. In order to allow pecuniary pressure to be put on the railroad companies, ruinous and disastrous pressure is allowed to be put on the people of the whole country, who must be deprived of the necessities of life in order that the trainmen may secure more acceptable conditions of employment. To suppose that the people of the United States would submit to the deprivation of the prime necessity of transportation is a most unreasonable idea. Long before the Commission would ever make its report, the deliberations of the Board would be forgotten in the suffering of the public, and a summary end would have been made to the situation. The pressure of the public need would require that another Congress give the remedy which the late Congress refused. The second objection is that the bill makes no provision for the emergency of the cessation of transportation in time of peace. In time of war the President is given the power to take over the railroads of the country and operate them. In time of peace, he can only sit still. The emergency requiring the transportation of troops, military equipment and supplies of the United States in time of war is a serious thing, but it is nothing

[31] H. R. 20752. [32] S. 8201.



as compared with the emergency of the entire cessation of transportation in time of peace. The bill makes elaborate provision for the smaller misfortune, but leaves the public exposed to the greater one. After reading the bill, one is compelled to ask, why is the right of four hundred thousand men to strike to be preferred over the right of a hundred million people to have the necessities of life without interruption? Have the people of the United States no rights in the matter?

In the report of the Committee on Interstate and Foreign Commerce of the House of Representatives, of February 6th, 1917,[33] there occurs the following interesting passage:

"* * * * the committee did not deem it wise nor just to prohibit strikes and lockouts, either temporarily or permanently, without first providing a peaceable, civilized, speedy, and just method or tribunal to determine all differences by peaceable means. Until such tribunal or method can be established it would not be wise or just to take away the right of strike or lockout."

The report does not throw any light upon the question why the Committee did not provide such a method or tribunal instead of leaving the employees as before, with no remedy but to strike.

In the report submitted by Senator Newlands from the Committee on Interstate Commerce, February 10, 1917, to accompany Senate Bill 8201, the following passage occurs:

"Whilst a minority of the committee, including the chairman, realize that the strike is the only effective weapon which labor has thus far had in enforcing its just claims and that it has been useful and effective in accomplishing needed reforms as to the hours, wages and conditions of labor, they feel that the advance of civilization requires the substitution of reason for force in all contentions between the State and the individual and between man and man, as well as between nations. Viewed in this light, the strike, whilst thus far and under existing conditions needed in order to secure for labor a just consideration of its rights, has been a process resulting in serious economic losses to both employers and employees, and in the last analysis, a resort to

[33] Accompanying H. R. 20752.

violence, it would appear to be the duty of Congress in its control of interstate commerce to see that a fair tribunal shall be created for the adjustment of labor disputes, and that when that tribunal is secured, the right of strike, as well as the right of lockout, should be suspended.

"They feel that this is particularly true regarding the conduct of interstate transportation, a great public service, intrusted by the Government to quasi-public corporations, of such a nature that any suspension in its operations for a time, however short, inflicts grievous and unsupportable wrongs upon society at large, involving the paralysis of production and trade, and ultimately suffering, distress, and starvation. They feel that the public interest requires that such a public service should not be subject to interruptions, and that whatever may be said in favor of the right of strike in other activities, no excuse can be presented for the negligence of civilized society in permitting for a moment the great highways of transportation to be obstructed. As, therefore, the governmental investigation provided for by the reported bill is intended, first, to ascertain the facts; second, to ascertain the cause of the difficulty; and, third, to suggest a remedy with the view of producing an enlightened public sentiment both among the disputants and the community at large which would result in a peaceful adjustment of the dispute, they believe that the right of strike and lockout ought to be suspended during this period of investigation and for a reasonable time thereafter. In this view, however, they have been overruled by their associates."

Another unfortunate feature of this bill is that it makes the same officers who endeavor to conciliate the respective parties afterward sit on a tribunal to make recommendations for a settlement of the dispute. When they are engaged in the work of conciliation it is their duty to ascertain, if possible, from either side how far they would be willing to go in the interest of peace. Obviously, if they have to sit later as a board to make recommendations upon the merits, the contending parties will hesitate exceedingly in giving this information, as it might be used against them when the final recommendations are made.

A bill was introduced by Mr. Sims [34] January 30, 1917, to

[34] H. R. 20630.



authorize the President of the United States in certain emergencies to take possession of and operate the lines of a commerce carrier engaged in interstate commerce, and for other purposes, which specially provides that in case of actual or threatened strike on any railroad the President may take possession of and operate the road in the manner most conducive to the safety and welfare of the public, afterward restoring the property to its owners when the public interest and safety no longer require the continued possession and operation by the United States. This bill is much less elaborate than the one introduced by Mr. Adamson, and its details could doubtless be considerably improved. What it proposes, however, is in the interest of the whole people, and not of any particular class, and at least this much protection ought to be given to the public. The bill, however, does not meet the fundamental mischief that if there were a general railroad strike the experienced men would all leave their posts, and the Government would have to make the best shift it could under the circumstances. It would be just as reasonable if, during the progress of a war, all of the regular troops of the United States should lay down their arms and call upon the Government to fill their places with volunteers, or the best way it could. If anybody has to be drafted to perform a public service, why not the man who is most fit? Both of these bills proceed on the idea that nothing must be done to prevent railroad employees from quitting all at once, by preconcerted arrangement, and that it is necessary in order for the railroad employees to put pressure on the railroad companies, that the railroad employees should have the right to stop transportation everywhere at the same moment. If this hurts the public, it is the making of the strikers.

In H. R. 20907, introduced in the House of Representatives by Mr. Lenroot February 14, 1917, to amend an act providing mediation, conciliation, and so forth, approved July 15, 1913, the ingenious provision is made that it shall be unlawful for employers to increase wages or to compromise or adjust a controversy with their employees in any way that will cause an increase in the operating costs of the employer, while official investigation is pending. This would probably be a very effective provision to

prevent a strike, but there is still the question, what would become of the public if a general strike occurred, nevertheless.

It is interesting to observe that to H. R. 20632, making appropriations for the naval service for the fiscal year ending June 30, 1918, the House added a provision making it unlawful to incite employees engaged in work for the Government to leave such work, or to engage in strikes, penalties by way of fines and imprisonment being provided.

A bill has been introduced (House 538) in the Legislature of the State of California, which not only provides for the appointment of a Board of Mediation to investigate labor disputes and suggest terms of settlement, but compels public utilities and their employees to submit statements of their disputes and differences to the Railroad Commission and to await investigation of such disputes before a strike or lockout is called, and imposes penalties to secure obedience.

A bill has also been introduced into the Minnesota Legislature, House 206, providing for the appointment of a Board of Conciliation and Mediation of three members, and prohibiting strikes and lockouts until the investigation has been completed, including recommendations for settlement.

As showing the point of view of the business men of the country upon this question, the Chamber of Commerce of the United States of America, as appears from their Special Bulletin of February 12, 1917, recently submitted the matter to a referendum of its members with the following results.

The questions submitted by the Committee and the result of the balloting were as follows:

I. Shall existing law be so amended or supplemented as to require full public investigation of the merits of every dispute between railroad carriers of interstate commerce and their employees, to be instituted and completed before any steps tending to the interruption of transportation shall be attempted?

1226½ votes in favor.
18½ votes against.

II. Shall existing law be so amended or supplemented as to provide that upon any board of investigation or arbitration of disputes between railroad carriers of interstate commerce



and their employees, the employers and employees shall have equal representation and the public, as having paramount interest, shall have a majority representation?

1165½ votes in favor.
60½ votes against.

III. Should Congress establish a permanent statistical division under the Interstate Commerce Commission to study and compile statistics relating to wages and conditions of service upon railways, the records and services of this division to be immediately available to boards of investigation or arbitration considering disputes between railways and the employees?

1171 votes in favor.
70 votes against.

The necessities of public service in this country make a strike upon a railroad an economic crime, and a general railroad strike, if persisted in, would inevitably result in revolution, as the commercial interests of the country could not endure the cessation of transportation. Hitherto, the recurring controversies in regard to the amount of wages have been settled by temporary arbitrators, called from the body of the people, and disappearing again, without previous experience or the traditions of permanent administration. The body which decides what wages shall be, should be the body which controls the earning of the wages, the body which regulates the rates and charges, which make the payment of wages possible. No satisfactory solution of the problem of railroad wages can be found, short of their control by the rate-making bodies, established by the government. The settlement of wage disputes should be a branch of the activities of the Interstate Commerce Commission. Only their great powers are adequate to the task, and they alone are in position to see that the wages are found in order that they may be paid.[35]

One can hardly rise from a serious consideration of the

[35] See bill introduced by Senator Underwood, December 5, 1916, S. 7031, granting to the Interstate Commerce Commission power to fix hours of work and wages. As to whether or not such an arrangement would be constitutional we are likely to know more when the Supreme Court decides the pending case of Wilson *v.* New and Ferris, Receivers, involving the validity of the so-called Adamson Law.

problem of labor disputes without the feeling that the legal status of wage quarrels is today little beyond trial by battle. Human genius has been adequate to find a peaceable substitute for private vengeance. To create through an international tribunal and international police an efficient substitute for war, is a plan which many competent publicists consider entirely practicable. If the future holds out to us a perpetual prospect of petty civil wars between employers and employees, for this is what strikes really are in their actual operation, it will not be because the Thirteenth Amendment stands in the way of the American people, but because public men are unwilling to substitute the orderly process of a tribunal for the lawless and cruel circumstances of industrial war. It has been observed in the administration of the Australian Law that the contending parties, if they could have their own way about it, would rather have a fight than a settlement of their grievances. The public, however, at least in that part of the world, has finally succeeded in having its rights respected and is no longer compelled to suffer the lack of the necessities of life in order that a comparatively small number of citizens may have the joy of combat.

*Blewett Lee.*

Chicago, Ill.

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